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9 **UNITED STATES BANKRUPTCY COURT**

10 **SOUTHERN DISTRICT OF CALIFORNIA**

11) Case No: 18-06051-LT11
12)
13)
14) In re: JAMES KAVANAGH AND ROBIN
15) CHRISTOPHER D. DOUGHERTY and KAVANAGHS' COMPLAINT TO
16) NEREIDA I. DOUGHERTY, DETERMINE NONDISCHARGEABILITY
17) Debtors. OF DEBTS PURSUANT TO 11 U.S.C.
18) SECTION 523(a)(2), 11 U.S.C. SECTION 523(a)(4), 11 U.S.C. SECTION 523(a)(6),
19) 11 U.S.C. SECTION 523(a)(12) AND 11 U.S.C. SECTION 523(a)(19)
20)
21)
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23)
24)
25)
26)
27)
28)
JAMES KAVANAGH; ROBIN)
KAVANAGH,)
Plaintiffs,)
v.)
CHRISTOPHER D. DOUGHERTY;)
NEREIDA DOUGHERTY,)
Defendants.)

1 James Kavanagh and Robin Kavanagh by and through their attorneys, LAW
2 OFFICES OF MARK L. MILLER, bring this Adversary Complaint against Debtors
3 Christopher Dougherty and Nereida Dougherty.

4 **JURISDICTION**

- 5 1. This is an adversary proceeding brought pursuant to Rule 7004(4) of the Fed. R.
6 Bank. Procedure.
7 2. This Court has subject matter jurisdiction; and this matter is a core proceeding
8 under 28 U.S.C. Section 157 and Section 1334.
9 3. Venue is proper in this Court pursuant to 28 U.S.C. Section 1409(a) because a
10 bankruptcy case concerning the defendants is pending before this Court.

11 **PARTIES**

- 12 4. Plaintiffs James and Robin Kavanagh ("PLAINTIFFS") are a married elder-couple.
13 James Kavanagh is disabled. At all times mentioned herein, PLAINTIFFS were
14 residents of San Diego County, California.
15 5. Christopher Dougherty and Nereida Dougherty ("DEFENDANTS"), are a married
16 couple, who availed themselves of the United States Bankruptcy Code by
17 initiating a Chapter 11 bankruptcy proceeding filed with this Court.
18 6. At all times mentioned in the Complaint, Debtor Christopher Dougherty held
19 himself out to be a "certified and licensed" financial manager who would
20 appropriately take and invest the PLAINTIFFS' retirement monies.

21 **GENERAL ALLEGATIONS**

- 22 7. On October 09, 2018, Christopher D. Dougherty and Nereida I. Dougherty
23 ("DEFENDANTS"), filed a voluntary petition for chapter 11 bankruptcy in this
24 Court.
25 8. At all times mentioned herein, Christopher Dougherty and Nereida Dougherty
26 owned, operated, managed and controlled C & N Wealth Management.

- 1 9. At all times mentioned herein, Christopher Dougherty and Nereida Dougherty
2 owned, operated, managed and controlled C&D Professional Services, Inc.
3 10. At all times mentioned herein, Christopher Dougherty and Nereida Dougherty
4 owned, operated, managed and controlled RD3, Inc.
5 11. At all times mentioned herein, Christopher Dougherty and Nereida Dougherty
6 owned, operated, managed and controlled JTA Real Estate Holdings, LLC.
7 12. At all times mentioned herein, Christopher Dougherty and Nereida Dougherty
8 owned, operated, managed and controlled JTA Farm Enterprises, LLC.
9 13. At all times mentioned herein, Christopher Dougherty and Nereida Dougherty
10 owned, operated, managed and controlled JTA Cattle & Hay Broker Services.
11 14. At all times mentioned herein, Christopher Dougherty and Nereida Dougherty
12 owned, operated, managed and controlled JTA Private.
13 15. Upon information and belief, Christopher Dougherty repeatedly lied about his
14 "certification" as a financial manager.
15 16. At all times mentioned herein, Christopher Dougherty and Nereida Dougherty
16 represented that they managed, contracted with, worked for, were employed by,
17 were agents for and/or were acting on behalf of C & N Wealth Management, C&D
18 Professional Services, Inc., TD Ameritrade, Fusion Capital Management,
19 SagePoint Financial, RD3, Inc., JTA Real Estate Holdings, LLC, JTA Farm
20 Enterprises, LLC, JTA Cattle & Hay Broker Services and JTA Private, among
21 others.
22 17. At all times mentioned herein, Christopher Dougherty and Nereida Dougherty
23 represented they were licensed to give financial advice.
24 18. DEFENDANTS entered into an agreement (hereinafter "Agreement") with
25 PLAINTIFFS. The Agreement provided that DEFENDANTS would invest, sell and
26 reinvest PLAINTIFFS' investment proceeds with PLAINTIFFS' approval.

1 19. DEFENDANTS entered into a “Non-Discretionary Investment Advisory Services”
2 agreement (hereinafter “Agreement”) with PLAINTIFFS. The Agreement
3 provided that DEFENDANTS would invest, sell and reinvest PLAINTIFFS’
4 investment proceeds with PLAINTIFFS’ approval. However, DEFENDANTS
5 utterly failed to abide by the Agreement.

6 20. Prior to filing the petition, DEFENDANTS deceived PLAINTIFFS into turning over,
7 under the guise of “investing”, \$320,000 (hereinafter “investment. In truth, the
8 DEFENDANTS wrongfully converted PLAINTIFFS’ investment into personal and
9 business expense funds for their own misuse without investing the money as
10 agreed to and directed by PLAINTIFFS.

11 21. PLAINTIFFS continue to be part of an ongoing financial scam by the
12 DEFENDANTS which continues beyond the date of this Bankruptcy filing. Since
13 the filing of this Bankruptcy case, DEFENDANTS continue to contact and solicit
14 funds from these, and other creditors, demanding more monies through the use
15 of continued intimidation and fraud.

16 22. DEFENDANTS lured PLAINTIFFS into believing DEFENDANTS would invest
17 their money into various financial vehicles, allowing the PLAINTIFFS to realize
18 returns on their investment in the form of interest payments and capital growth
19 over time.

20 23. DEFENDANTS lied.

21 24. PLAINTIFFS money was not invested into legitimate investment account(s) but
22 rather was used for business expenses, credit card payments, vehicle expenses
23 (car detailing, car repairs, uber), car payments, payroll expenses, insider
24 payments, personal retirement accounts, travel, entertainment and payments to
25 other “investors” creating a Ponzi scheme, among others.

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FIRST CLAIM FOR RELIEF

(Non-Dischargeability against the Christopher Dougherty and Nereida Dougherty Pursuant to 11 U.S.C. Section 523(a)(2)(A))

25. PLAINTIFFS reallege and incorporate by reference all paragraphs mentioned in this Complaint as though fully set forth herein.

26. Pursuant to 11 U.S.C. Section 523(a)(2), a debtor is not discharged from debt "for money, property services or an extension, renewal, or refinancing of credit, to the extent obtained by (A) false pretenses, false representation, or actual fraud..."

27. Based upon the actions and false representations of DEBTORS, PLAINTIFFS were induced to and did, invest their funds with DEBTORS.

28. DEBTORS knew they were making false statements to the PLAINTIFFS.

29. DEBTORS made deceptive statements to the PLAINTIFFS.

30. DEBTORS intended to deceive the PLAINTIFFS.

31. PLAINTIFFS justifiably relied on the DEBTORS' statements when they invested money with the DEBTORS.

32. PLAINTIFFS damage was proximately caused by PLAINTIFFS reliance on the DEBTORS' statements and conduct.

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SECOND CLAIM FOR RELIEF

(Nondischargeability against the Christopher Dougherty and Nereida Dougherty

33. PLAINTIFFS reallege and incorporate by reference all paragraphs mentioned in this Complaint as though fully set forth herein.

34. Pursuant to 11 U.S.C. Section 523(a)(4), a debtor is not discharged from debt, "for fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny."

35. DEBTORS were acting as fiduciaries and owed a fiduciary duty and to act in good faith in the best interest of their clients PLAINTIFFS.

36. DEBTORS breached their fiduciary duty by using the PLAINTIFFS investment for purpose(s) other than those agreed upon by the PLAINTIFFS, thereby divesting PLAINTIFFS of their money.

37. DEBTORS entrusted their property to DEBTORS because they trusted DEBTORS and relied upon their representations, statements, writings and statements. DEBTORS fraudulently used PLAINTIFFS' money for their own benefit and deprived PLAINTIFFS of the use of their money.

38. As a result of DEBTORS' fraud and/or defalcation while acting in a fiduciary capacity and/or embezzlement and/or larceny, PLAINTIFFS' debt should be adjudicated non-dischargeable pursuant to 11 U.S.C. Section 523(a)(4).

THIRD CLAIM FOR RELIEF

(Nondischargeability against the Christopher Dougherty and Nereida Dougherty

Pursuant to 11 U.S.C. Section 523(a)(6))

39. PLAINTIFFS reallege and incorporate by reference all paragraphs mentioned in this Complaint as though fully set forth herein.

40. Pursuant to 11 U.S.C. Section 523(a)(6), a debtor is not discharged from debt, "for willful and malicious injury by the debtor to another entity or to the property of another entity."

41. DEBTORS represented to PLAINTIFFS that their funds would be invested into tax free municipal bonds. DEBTORS further represented to PLAINTIFFS that the

1 accounting, paperwork, oral and written statements provided by DEBTORS were
2 accurate and truthful.

3 42. DEBTORS' representations to PLAINTIFFS were false and were intended to
4 fraudulently induce PLAINTIFFS to continue "investing" funds with DEBTORS.

5 43. DEBTORS actions were willful and malicious and were intended to injure
6 PLAINTIFFS by depriving PLAINTIFFS of their money.

7 44. As a result of DEBTORS' willful and malicious conduct, PLAINTIFFS' debt should
8 be adjudicated non-dischargeable pursuant to 11 U.S.C. Section 523(a)(6).

9 **FOURTH CLAIM FOR RELIEF**

10 **(Nondischargeability against the Christopher Dougherty and Nereida Dougherty**

11 **Pursuant to 11 U.S.C. Section 523(a)(12)**

12 45. Plaintiffs reallege and incorporate by reference all paragraphs mentioned in this
13 Complaint as though fully set forth herein.

14 46. Upon information and belief, DEBTORS' actions also "constitute malicious or
15 reckless failure to fulfill any commitment by the debtor of a Federal depository
16 institutions regulatory agency to maintain the capital of an insured depository
17 institution..." as defined in 11 U.S.C. Section 523(a)(12).

18 47. As a result of DEBTORS' violation of 11 U.S.C. Section 523(a)(12), PLAINTIFFS
19 have suffered damages in an amount not presently ascertained but believed to
20 be in excess of \$285,000 which should be exempt from discharge in the
21 DEBTORS' bankruptcy.

22 48. Based on the foregoing violation of 11 U.S.C. Section 523(a)(12), PLAINTIFFS
23 request that the debt owed to PLAINTIFFS be deemed non-dischargeable in
24 DEBTORS' bankruptcy.

25 **FIFTH CLAIM FOR RELIEF**

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1 **(Nondischargeability against the Christopher Dougherty and Nereida Dougherty**

2 **Pursuant to 11 U.S.C. Section 523(a)(19)**

3 49. Plaintiffs reallege and incorporate by reference all paragraphs mentioned in this
4 Complaint as though fully set forth herein.

5 50. Pursuant to 11 U.S.C. Section 523(a)(19), a debtor is not discharged from debt,
6 for violating Federal Securities law, state securities laws, or violation of any
7 regulation within Federal Securities law and state securities laws. 11 U.S.C.
8 Section 523(a)(19) holds a debtor is not discharged from debt for "common law
9 fraud, deceit, or manipulation in connection with the purchase or sale of any
10 security."

11 51. Upon information and belief, DEBTORS engaged in Securities Fraud in violation
12 of Federal and State laws.

13 52. Based on the foregoing violation of 11 U.S.C. Section 523(a)(19), PLAINTIFFS
14 request that the debt owed to PLAINTIFFS be non-dischargeable in DEBTORS
15 bankruptcy.

16 **PRAYER FOR RELIEF**

17 PLAINTIFFS pray for judgement on the Complaint as follows:

- 18 1. Denial of Discharge of the Debt owed to PLAINTIFFS;
- 19 2. For interest on all amounts owed, attorneys' fees and costs as provided for
20 by Contract, Statute, Equity and all other theories and as awarded by this
21 Court; and
- 22 3. For such other and further relief as the Court deems just and proper.

23 LAW OFFICES OF MARK L. MILLER

24 Dated: January 5, 2019

25 **/S/ MARK L. MILLER**

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27 Mark L. Miller, Esq. for PETITIONER